

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA ISP ASSOCIATION, INC.,

Complainant,

vs.

PACIFIC BELL TELEPHONE COMPANY
(U-1001-C); SBC ADVANCED SOLUTIONS, INC.
(U-6346-C) and DOES 1-20,

Defendants.

Case 01-07-027
(Filed July 26, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING COMPLAINANT'S MOTION REQUESTING
COMMISSION LEGAL ASSISTANCE
AND TELEPHONIC DEPOSITIONS**

On July 2, 2002, the California Internet Service Provider Association (CISPA or Complainant) filed a motion requesting the Commission issue a ruling directing staff from the Commission's Legal Division and/or Public Advisor's Office to attend and defend approximately 60 depositions of end-users who submitted declarations in support of CISPA's position in this matter (hereinafter "Consumer Declarants"). CISPA states that the Consumer Declarants are not generally represented by counsel and that CISPA does not have funds to pay for legal representation for these individuals. In addition, the motion requested the Commission to direct Defendants to provide these same Consumer Declarants with the choice of a telephonic deposition based on the argument that a

telephone deposition would benefit the individuals involved and would not cause any material harm to Defendants.

Defendants oppose Complainant's motion by asserting there is no reason for the Commission to furnish attorneys for the Consumer Declarants and that CISPA is merely attempting to have the Commission spend time and resources on what CISPA itself should do. Further, Defendants suggest that because telephonic depositions are an inferior method of cross-examining a witness, evaluating a witness' response, presenting documents for a witness to evaluate, and potentially impeaching a witness, telephonic depositions should be limited to only those Consumer Declarants who can demonstrate a hardship.

Defendants note that certain accommodations such as telephonic depositions have already been made for two Consumer Declarants.

Complainant's motion is denied. First, I do not find it an appropriate use of Commission resources to direct an attorney from the Commission's Legal Division or the Public Advisor's Office to attend the roughly 60 depositions in question. CISPA has not adequately justified why the Commission should accept the burden of providing counsel to the witnesses that CISPA has long been arranging in support of its case. At an April 25, 2002 prehearing conference in this matter, I discussed with the parties the use of affidavits and depositions to avoid extensive cross-examination and duplicative testimony from CISPA consumer witnesses during evidentiary hearings. At that time, CISPA agreed to this approach and did not indicate that depositions of its witnesses would present any problems. (PHC Transcript at 145). CISPA has known since April that it would file affidavits or declarations from consumers and presumably chose this strategy with its legal resources in mind.

Moreover, it is not clear that CISPAA is unable to provide representation to attend the depositions or monitor them by phone. During a conference call with the parties on July 9, 2002, I made arrangements for additional attorneys or other persons affiliated with CISPAA to monitor the depositions. I also requested that if CISPAA is unable to send a representative to monitor the deposition, Defendants should provide CISPAA a next-day transcript of the deposition.

Second, I will not require Defendants to offer telephonic depositions to all Consumer Declarants. I understand that every effort is being made to schedule the depositions in locations and at times that accommodate the Consumer Declarants' needs, and that telephonic depositions have been arranged when a hardship has been shown. Where Consumer Declarants have significant hardships (such as medical conditions) and other accommodations cannot be made, Defendants should arrange telephonic depositions.

IT IS RULED that the July 2, 2002 motion of the California Internet Services Provider Association is denied.

Dated July 12, 2002, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Complainant's Motion Requesting Commission Legal Assistance and Telephonic Depositions on all parties of record in this proceeding or their attorneys of record.

Dated July 12, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.